

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* HOPPER/STANDLEY, Minors.

UNPUBLISHED  
October 20, 2016

No. 332539  
Berrien Circuit Court  
Family Division  
LC No. 2015-000092-NA

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Before: K. F. KELLY, P.J., and O'CONNELL and BOONSTRA, JJ.

PER CURIAM.

Respondent-mother, C. Hopper-Spink (respondent), appeals as of right the trial court's order terminating her parental rights to her two minor daughters under MCL 712A.19b(3)(b)(iii) (nonparent caused physical injury or physical or sexual abuse of the child and the child will likely suffer injury or abuse if returned to the parent), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood that child will be harmed if returned to the parent). We affirm.

I. FACTUAL BACKGROUND

Respondent's boyfriend, Jeffrey Wilcox, lived in the same house as respondent and the children. In May 2015, respondent's older daughter disclosed that Wilcox had sexually assaulted her on multiple occasions. The younger daughter also disclosed that Wilcox had engaged in sexually inappropriate behaviors. Respondent initially forced Wilcox out of the house, and the Department of Health and Human Services (DHHS) told respondent to call the police if Wilcox returned.

However, about one month later, respondent allowed Wilcox to move back into the home. When the Berrien County prosecutor later interviewed respondent about charges against Wilcox, respondent stated that the children had falsely accused Wilcox and had dreamed the behaviors. When DHHS informed respondent that the children and Wilcox could not live in the same house together, respondent sent the children to live with their grandparents.

The children testified at the termination hearing. The older child testified that Wilcox had put his hand underneath her pants and inserted his fingers into her vagina on more than one occasion. She stated that when Wilcox moved back into her house, she did not feel that respondent was supporting her and she did not want to live with respondent if Wilcox was living in the home. The child also stated that respondent told her to state that Wilcox's sexual abuse occurred in a dream so that he would not go to prison. The younger child testified that Wilcox

had put his hand down the front of her pants but over her underwear, and that she had witnessed Wilcox put his hand on the older child's privates. The younger child also stated that respondent told her to tell investigators that the touching was only a dream. The youngest child did not want to live with respondent if Wilcox was also living in the home.

The children's grandparents each testified that respondent was a good mother overall, but she had a tendency to engage in unhealthy relationships. Detective Chad Mitchell testified that he performed a forensic analysis of respondent and Wilcox's telephones as part of an investigation of Wilcox. Respondent and Wilcox continued to text each other, despite that it violated Wilcox's bond. Jodi Haygood testified that respondent appeared "very annoyed" that she could not live with Wilcox, and her decision to send the children to live with their grandparents showed that she chose Wilcox's welfare over the children's. Brook Rospierski, an expert in victims' responses to sexual abuse, testified that child victims who do not receive adequate support experience more emotional trauma than those who do. The children's foster-care worker, Alyssa LaDuke, testified that as of two weeks before her testimony, respondent continued to communicate with Wilcox and failed to recognize her responsibility in the children's removal.

Sandra Hunter, respondent's therapist, testified that with six or seven months of "really strong counseling," respondent might be ready for reunification with the children. However, counseling might take longer or involve multiple attempts. Respondent testified that Hunter had helped her realize that allowing Wilcox to move back into her house was the largest mistake of her life. Respondent denied that she had continued to communicate with Wilcox. However, when the Department presented a recording of a telephone conversation between respondent and Wilcox in late December 2015, respondent admitted that she may have spoken with Wilcox on that date. In the telephone recording, respondent assured Wilcox that she would "wait for him," "make sure of everything," that they were not "divided," and that she was not "going anywhere."

The trial court found that because of respondent's continued contact with Wilcox, there was a strong likelihood the children would be harmed if returned to her care. The trial court found that the amount of time it would take respondent to be able to safely care for the children was not reasonable, and that the children continued to suffer emotional harm from respondent's contact with Wilcox. The trial court terminated respondent's parental rights under MCL 712A.19b(3)(b)(iii), (g), and (j). Respondent now appeals.

## II. STANDARDS OF REVIEW

This Court reviews for clear error the trial court's factual findings and ultimate determinations on the statutory grounds for termination. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). We also review for clear error the trial court's findings regarding the children's best interests. *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014). A finding is clearly erroneous if, after reviewing the entire record, we are definitely and firmly convinced that the trial court made a mistake. *Mason*, 486 Mich at 152.

## III. STATUTORY GROUNDS

Respondent contends that the trial court clearly erred in terminating her parental rights because it was not reasonably likely that the children would suffer future harm if they were returned to her care. We disagree.

The trial court terminated respondent's parental rights under MCL 712A.19b(3)(b)(iii), (g), and (j), which provide in pertinent part:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

\* \* \*

(b) The child or sibling of the child has suffered physical injury or physical or sexual abuse under 1 or more of the following circumstance:

\* \* \*

(iii) A nonparent adult's act caused the physical injury or physical or sexual abuse and the court finds that there is a reasonable likelihood that the child will suffer from injury or abuse by the nonparent adult in the foreseeable future if placed in the parent's home.

\* \* \*

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

\* \* \*

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The trial court may consider the potential psychological harm to the child caused by the parent's conduct or capacity. *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011). A parent's failure to comply with the Department's directives is evidence that the children may be harmed if returned to the parent's home. See *White*, 303 Mich App at 710-711.

In this case, witnesses testified that respondent continued to be involved with the man who sexually abused her children, contrary to the Department's directives. She chose his well-being over that of her children to the point of moving her children out of the house and allowing Wilcox to move back in. Respondent continued to contact Wilcox even while he was jailed for assaulting her children, and she made promises that she would "wait for him," "make sure of everything," and that she was not "going anywhere." Rospierski testified that child sufferers of sexual abuse are likely to suffer further psychological harm if they are not supported. Instead of

seeking the support that her sexually abused children needed, respondent counseled them to lie about the abuse.

We are not definitely and firmly convinced that the trial court made a mistake when it found that it was reasonably likely that the children would suffer harm if returned to respondent's care. The record in this case established that respondent placed the well-being of Wilcox before the well-being of the children, and that the children could not afford to wait the amount of time it would take respondent to learn to keep them safe.

#### IV. THE CHILDREN'S BEST INTERESTS

Respondent contends that the trial court clearly erred when it found that terminating her parental rights was in the children's best interests because she was a good mother who was strongly bonded to the children. We disagree.

The trial court should weigh all the evidence available to determine the children's best interests. *White*, 303 Mich App at 713. To determine whether termination of a parent's parental rights is in a child's best interests, the court should consider a wide variety of factors that may include "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts Minors*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). The trial court may also consider "the parent's compliance with his or her case service plan . . . ." *White*, 303 Mich App at 714. We defer to the special ability of the trial court to judge the credibility of witnesses. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The trial court found that the children both were bonded with respondent and wanted to be returned to her care if Wilcox was not present. The trial court questioned whether that bond was healthy under the circumstances. It considered respondent's continued contact with Wilcox and her "hesitan[ce] to be involved in services initially." It also considered the children's placement with relatives and the possibility of a guardianship, but rejected it under the circumstances because of concerns of stability for the children. It found that terminating respondent's parental rights was in the children's best interest.

While the children were bonded with respondent, if there is a serious dispute about whether a parent has a *healthy* bond with the children, termination may be in the children's best interests despite the strength of that bond. See *In re CR*, 250 Mich App 185, 196-197; 646 NW2d 506 (2001), overruled in part on other grounds by *In re Sanders*, 495 Mich 394, 422-423 (2014). In this case, the children were strongly bonded with respondent, but respondent's actions in choosing the well-being of the children's sexual abuser over the well-being of the children (to the point of encouraging the children to lie about whether the abuse occurred), indicated that the bond was not healthy.

Considering additional factors, respondent did not comply with the Department's directives to cease contact with Wilcox, and while respondent may have had general parenting abilities, such as keeping the children clothed and fed, respondent lacked parenting ability in failing to protect her children from sexual abuse. Finally, the children, who had been traumatized by their experience, deserved the stability and finality that termination of

respondent's parental rights would provide. For these reasons, we are not definitely and firmly convinced that the trial court made a mistake when it found that terminating respondent's parental rights was in the children's best interests.

We affirm.

/s/ Kirsten Frank Kelly  
/s/ Peter D. O'Connell  
/s/ Mark T. Boonstra